No. 73-1156

In the Supreme Court of the United States

OCTOBER TERM, 1973

EVANGELINE PARISH SCHOOL BOARD, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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This petition arises as part of a school desegregation action commenced in 1965 by black parents in Evangeline Parish, Louisiana. On August 5, 1969, pursuant to a remand from the court of appeals, the district court ordered immediate implementation of a desegregation plan prepared by the Office of Education, Department of Health, Education, and Welfare. On August 28, 1969, the United States was permitted to appear in this matter as an *amicus curiae*, and in July 1971 a motion was granted allowing intervention by the United States as a party plaintiff and joining the Louisiana State Board of Education as a party defendant.[1]

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[1] Intervention was pursuant to Section 902 of Title IX of the Civil Rights Act of 1964, 42 U.S.C. 2000h-2.

The United States thereafter sought a preliminary injunction prohibiting the petitioner school board from providing any financial or other material support to the Evangeline Academy, a segregated private school, alleging that such aid by the school board had the purpose and effect of maintaining and perpetuating a racially segregated educational system in Evangeline Parish.[2] The district court denied the injunction and rendered judgment in favor of the defendants (Pet. App. 35-42), relying primarily on the opinion of the three-judge district court in *Norwood* v. *Harrison*, 340 F. Supp. 1003 (N.D. Miss.).[3]

After this Court, in *Norwood* v. *Harrison*, 413 U.S. 455, had reversed the decision relied upon by the district court in this case, the court of appeals vacated the judgment of the district court and remanded for reconsideration of "the entire case insofar as it relates to state aid to Evangeline Academy" (Pet. App. 46). The court of appeals denied rehearing on October 30, 1973 (Pet. App. 47), and the petition for a writ of certiorari was filed on January 28, 1974.

1. Petitioners assert that the motion of the United States to intervene in this case was untimely since the case had allegedly been completed before the intervention was granted (Pet. 11).[4] But, as petitioners themselves note, the petitioner school board is currently operating under a court order issued in this case directing it to

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[2]The United States also sought to disestablish the school district's racially segregated transportation system.

[3]The district court did order the establishment of a desegregated bus system (Pet. App. 40-42).

[4]Petitioners did not preserve their objection to the government's intervention by a timely cross-appeal in the court of appeals.

maintain a desegregated school system. This proceeding is, in effect, designed to compel petitioners to comply with that order barring discrimination, and to bring to the court's attention deficiencies in the effectiveness of the compliance procedures previously ordered. See *Equal Employment Opportunity Commission* v. *United Ass'n of J & A of Plum., Etc.*, 438 F. 2d 408, 414 (C.A. 6), certiorari denied, 404 U.S. 832. Cf. *United States* v. *Parke, Davis & Co.*, 365 U.S. 125; *Louisiana* v. *United States*, 380 U.S. 145, 154-156.

The suggestion in the petition (Pet. 9-21) that the United States was without authority to seek relief as to segregated transportation or aid to private schools is likewise erroneous. Under 42 U.S.C. 2000h-2, the United States is entitled on intervention to the same relief as if it had instituted the action. See *Spangler* v. *United States*, 415 F. 2d 1242 (C.A. 9). Both of these claims could have been raised by an original plaintiff in a school desegregation case. See, *e.g.*, *Singleton* v. *Jackson Municipal Separate School District*, 419 F. 2d 1211 (C.A. 5) (transportation); *McNeal* v. *Tate County School District*, 460 F. 2d 568 (C.A. 5), certiorari denied *sub nom. Tate Educational Foundation, Inc.* v. *McNeal*, 413 U.S. 922 (aid to private schools).

2. In remanding the case, the court of appeals noted (Pet. App. 44-45):

> [T]he [District] Court's ruling and the record before us indicate clearly that Louisiana was providing just the kind of aid to the type of school which falls within the proscription of *Norwood*. * * *
>
> [The] Evangeline Academy is a racially segregated institution providing an alternative to the court ordered integration of the Evangeline Parish public schools.

The evidence in the record amply supports that conclusion of the court of appeals. The state aid being provided—books and transportation—is similar to the aid held impermissible in *Norwood* and is provided under a similar procedure (Pet. App. 38), and the Evangeline Academy was shown to be a racially discriminatory school[5] (*id.* at 45). The petitioners, in effect, ask this Court to review factual determinations of the courts below, because, given those findings, the decision of the court of appeals was merely a proper application of the long-standing rule, reaffirmed in *Norwood*, which forbids state support of segregated schools "through any arrangement, management, funds or property * * *." *Cooper* v. *Aaron*, 358 U.S. 1, 19.

Since the court of appeals properly applied well-settled legal principles to the facts of this case, further review is not warranted.

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[5]Petitioners contend that the opinion below misapplies *Norwood* v. *Harrison*, *supra*, since this case involves only the Evangeline Academy, while in *Norwood* the entire state program of textbook distribution to private schools was under attack (Pet. 29). Therefore, petitioners contend, *Norwood* does not justify challenging state aid to one private school, and not to another in the same parish. But this Court in *Norwood* noted that its holding required a "school-by-school determination" of whether racially restrictive admission policies were being followed. 413 U.S. at 471. The court of appeals correctly concluded that this record demonstrates that such policies were followed by the Evangeline Academy. No such showing was made for the Catholic parochial school in the same parish, and thus there was no basis for relief against it. In any event, nothing in *Norwood* suggests that state aid to all racially discriminatory schools in a given area must be challenged simultaneously.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1974.

[illegible]